2-22-1973

The Opinion Volume 13 Number 7 – February 22, 1973

The Opinion

The Opinion
77 West Eagle Street
Buffalo, New York 14202

Non-Profit Organization
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Buffalo, N.Y.
Permit No. 708

THE OPINION

Volume 13, Number 7 | State University of New York at Buffalo Law School | February 22, 1973

SBA Elects Officers

Marty Miller

Chris Greene

Student Bar Association elections were held on February 5, following a low-key campaign characterized by the usual large signs adorning the halls, mimeoed garbage on the floor of 110 and 108, and universal apathy.

The Results: in the race for President, Marty Miller amassed 100 votes to 69 for his competitor, Neal Dobshinsky. Chris Greene, the sole candidate for First Vice President, garnered 123; Jim McLeod, the only declarant for Second Vice President, got 118, compared to 7 for his nearest write-in competitor. Buffy Burke beat Regina Felton in the race for secretary, 92-21; and Hugh Scott won the post of Treasurer in a run-off on February 8 after his competition, Jerry Dyer, dropped out of the race. In the original contest, Dyer got 31 votes, to 29 for Scott and 15 for Dick Maigret.

Marty Miller, a Taurus, expressed satisfaction at his victory, and impatience to tackle the formidable problems that await him. "This student body has spent too much time sitting on its ass; as a result, the power to control our lives as students has slipped away into the hands of the faculty, the administration, and a few individuals." Miller cited the present structure of the SBA as an example. "Everything is done by Executive fiat, or by a few interested individuals. The great majority of the student representatives bitch a lot, but when it comes to putting in some work to get something done, they're all too busy." He pointed to the elections for SBA reps slated a month away as an opportunity for the student body to choose activist representatives who are willing to "put their money where their mouths are."

Jim McLeod

Miller expressed the intent to make the SBA into a government by committee. "Although it sounds like a bureaucracy, the committee system is the only way we can get a lot of people doing a little bit each. Everyone has too much homework; but unless all of us are willing to contribute a part of our time, student government will continue to be nothing more than a good word on the resume."

Buffy Burke

Miller pointed to the many complaints about the law school's arbitrary schedule, the lack of placement facilities and opportunities, and other hassles of student life – "talk is cheap. Only by making the SBA an organization in which every student plays an active part can we hope to translate all the rhetoric into worthwhile action."

Miller is not overly optimistic about the chances that every student will give his thirty minutes per week to the SBA; but his approach to his job spells an end to no-fault government, giving students an opportunity to do more than grumble.

--Photos by Belling

Hugh Scott

Weinstein Analyzes Court System

--Buffomante

Judge Weinstein

by Diane Graebner

"It's a very curious thing to have a U.S. District judge – with a fascinating job – considering running for the New York Court of Appeals," said Jack B. Weinstein, "but when I look out at the state system and review it, I find it utterly appalling."

Judge Weinstein, who spoke Feb. 8 in the Distinguished Visitors Forum at the Law School, said he had some ideas on how to improve the state system, and that many of these improvements could be made by the chief judge, who now has great administrative power.

"One of the reasons the state system doesn't work," said Judge Weinstein, "is improper administration." The chief judge since 1961 has had very great powers "but they haven't been exercised, partly because it's tradition." The opportunity has come up this year because the present chief judge is resigning, and the position must be filled by election. In the past the election has been "a bi-partisan deal or arrangement," moving up the senior judge while the other party appoints the substitute. No one has made it a contest since Learned Hand ran and lost in 1913, said the speaker.

When the position was "honorific, that was fine, but now we're in a time of crisis. There have been enormous pressures since World War II, a genuine effort to get equality of justice which puts an enormous strain on the court system. The problem is to deliver legal services to large numbers of people with relatively little expense and relatively quickly."

"We haven't achieved equality of justice," said the judge. "It's all very well to have a Mapp case or Miranda case which talk about these great principles, but unless the person who has contact is properly treated, it doesn't mean a thing. It's in the jails where we have inequality; in the jails where we have brutality."

The governor's recently announced program to crack down on drug pushers is "horrendous; it would utterly destroy many people," commented Judge Weinstein. "It reflects a kind of brutality abroad in the land. One of the great dangers of failing to bring the state system up to standard is that people are giving up on it. There's a failure to enforce constitutional standards, and a deterioration of federal concern with these standards, too."

The layman who says "narcotics addicts ought to be shot," suggested the speaker, thinks quite differently when he's faced with a real defendant in a jury situation.

"I'm convinced that in the long run we will have more effective protections through effective administration" and well-run correctional institutions than with "hit and miss type of relief" we're getting now, he stated.

Judge Weinstein said the state courts have great potential. "Just because you're on the federal bench doesn't mean you're any better, but they expect more of you" and that has its effect. He noted a recent law school graduate brought a case before him in federal court that the judge thought had more defenses in state court, but the young lawyer, "when he thought rights, thought Constitutional rights, federal courts, rather than state courts."

Among the powers that the chief judge could exercise, according to Judge Weinstein, are calling into being the Court on the Judiciary (which has been called five times in the past 20 years). He also suggested a state-wide committee of distinguished laymen to investigate the reports against judges (such as the alleged Mafia connections of Brooklyn judges). California has such a committee which costs about $50,000 per year and is very effective, he noted. The committee could investigate the charges, make public the ones that had no basis in fact and take the others to the Court on the Judiciary. The Brooklyn judges who have been under fire have reacted so far by not granting bail, refusing to dismiss charges and refusing to reduce pleas, which is no solution, according to Judge Weinstein.

–Buffomante

He also suggested the chief judge could appoint a series of investigative task forces. "The chief judge of the United States, who has far fewer powers, is beginning to use some of them. The federal courts have used them much more than the states. We have an enormously talented legal community and the chief judge can draw on this talent."

Commenting on the proposal that the state have a chief judge-appointed administrator, the speaker said this was "a way of keeping the boat from rocking . . . something unsuitable." The same system in the federal courts does not work, he stated, "because the administrator doesn't have moral authority; he isn't the head of the system."

–Buffomante

Judge Weinstein would prefer an appointed system of Court of Appeals judges, but he said the legislature instead is considering just abolishing the primary, "so the deal can't be broken up. The net reform may be the usual regression."

The election this year, according to the judge, will have a better chance than last year's of being educational since it's the only state-wide office up for election.

Prof. Herman Schwartz, who introduced the speaker, described him as "clearly one of the finest" federal district judges. Judge Weinstein, a graduate of Columbia Law School, also taught at Columbia while he was county attorney. He became a federal judge in the Eastern District of New York several years ago.. About 60 persons attended this speech in the Distinguished Visitors Forum series, the second this semester.

Editorial

LATE GRADES

Despite a plea from this newspaper last issue, the professors listed below did not find it expedient to turn in their course grades on time. The schedule allowed one month from the date of the last final examination for the grading of exams and papers, a lengthy time surely sufficient for anyone making a sincere effort to comply.

Although students are expected to hand in papers and exams on schedule, unless they are given permission to extend the deadline, some professors seem not to consider themselves bound to reciprocate. Common courtesy suggests that more than a sheepish apology is due from the malingerers . . . adhering to schedule next time would do much to remove the black marks from beside their names:

BIRZON	CRIM LAW
FLEMING	REMEDIES
HOLLEY	CRIM LAW
KOCHERY	CIV PRO B; JUD AD SEM
MANN	CON LAW B
SCHWARTZ, R.	COMP SEM; PERS IN LAW SEM

THE OPINION Volume 13, Number 7
February 22, 1973

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The Opinion is published every third week, except for vacations, during the regular academic year. It is the student newspaper of the State University of New York at Buffalo School of Law, 77 West Eagle Street, Buffalo, New York, 14202. The views expressed in this paper are not necessarily those of the Editorial Board or staff of *The Opinion*. *The Opinion* is a non-profit organization. Third Class postage entered at Buffalo, N.Y.

Brewster on Tenure

On Tenure
by Kingman Brewster, Jr.

Kingman Brewster, Jr. is President of Yale University. This excerpt from his 1971-72 Report is reprinted here by permission.

Of all the folkways of university life, perhaps "tenure" is least comprehensible to those whose professional or executive life involves the staffing of other forms of organized activities – business, finance, government, or non-profit service. In prosperous times, the tradition of academic tenure evokes puzzlement. In times when colleges and universities are struggling for financial survival, tenure is challenged with increasing frequency.

How, it is asked, can we talk glibly about the knowledge explosion or the exponential rate of change – with all its risk of rapid intellectual obsolescence – and at the same time lock ourselves into lifetime obligations to people in their mid-thirties? Not only do we risk becoming stuck with the obsolete, but we remove the most popularly understood incentive to higher levels of performance. Furthermore, since even in financially easy times, university resources are finite, every "slot" mortgaged for a full professor's lifetime blocks the hope for advancement by some promising members of oncoming generations. When resources are so tight that the faculty must be pruned, because of tenure most of the pruning is at the expense of the junior faculty. Many juniors are more up to date in their command of new methods and problems in fast-moving fields and many of them are more talented than some of the elders.

The American Association of University Professors – the organized guardian of academic freedom and tenure – has recently taken some pains to make it clear than tenure is not an absolute protection against dismissal. They say that a person can be fired for gross misconduct or neglect of duty. They assert that even a person with tenure may be terminated for financial reasons. Such termination is permissible in their eyes, however, only by a process which puts the burden of proof upon the university and in which the victim's faculty peers are both judge and jury, subject to final disposition by the trustees.

The practical fact in most places, and the most unexceptional rule at Yale, is that tenure is for all normal purposes a guarantee of appointment until retirement age. Physical or mental incapacity, some chronic disability, some frightful act of moral turpitude, or persistent neglect of all university responsibilities have on very few occasions in the past resulted in "negotiated" termination settlements. However, even in extreme circumstances there is a deep reluctance to compromise the expectations of tenure. For both human and institutional reasons it is the practice to ride it out even in cases where performance has fallen way below reasonable expectations. When it comes to financial reasons for termination, in all discussions about the possible shut-down of a program or department it has been assumed that the University would have an obligation to find a place at Yale where those with tenure could continue to work in their field.

In short, as far as Yale is concerned, the efforts of the AAUP to mollify the critics of tenure by argument that tenure is not an invulnerable shield against dismissal is of little operational significance. In Yale's case the argument for the policy of granting tenure must be made as though it were virtually a guarantee of appointment until retirement, not as though it were a privilege easily subject to qualification or revocation.

The defense of tenure usually falls into two categories: the need for job security, in order to draw good people into underpaid academic life; and the need to protect the academic freedom of the faculty.

Both of these points are valid; but put thus simply, both grossly understate the significance of tenure to the quality of a first-rate university.

The argument based on the recruitment of faculty is underscored by the simple fact that as long as most institutions grant tenure then any single institution must go along in order to remain competitive. This is probably true. However, I am enough of a "Yale chauvinist" to believe that if we were to decide that tenure is a bad thing, put up with only because our rivals offer it, we should find ways to get rid of it. There might even be some trade-off which would allow us to bid for the people we want in

continued on page 5

Right On!

Those people don't care

There is an ilk of hysterical, syndicated columnists of the Liberal persuasion who are running around without leashes or muzzles, nipping at and harrying us with their cries of "The fascisti are coming! The fascisti are coming!" (They evoke the image of Tom Wicker and Harriet Van Horne riding through the dark streets of Manhatten on a pair of frantic jackasses, waving red lanterns and braying their message over the braying of their steeds as the muggers close in.)

I have news for them. The fascisti are already here, except that in this country they call themselves Liberals.

There are a lot of faults that Liberalism has – its elitist snobbery, its desire to crush others into stereotpyes, its pious self-righteousness, its radical chic silliness, among others – but the worst is its incipient racism, which no doubt springs from Liberalism's collectivist philosophy. The Liberal ontology is devoid of any human characteristics which are not group labels: blacks, hard-hats, red-necks, bourgeois, reactionaries, revolutionaries. There are no individuals – all blacks are the same, etc. In short, there are no people, just robots preprogrammed to react in the ways ordained by liberal labelers, just faceless units of a collective mass.

The racism of Liberalism is especially obnoxious because the charge of racism is one which is so often leveled at any criticism of Liberal dogma. How many times have we heard that anyone opposed to busing, to crime, to "urban renewal" programs, to hiring quotas or any score of other projects dear to the heart of Liberal ideology is a red-necked, racist brute? Undoubtedly some of the opponents of some Liberal programs are racists, but the accusation of racism is too often used as a device to avoid debate of these issues on their merits.

When it comes to the crunch the suburbanite Liberals ship their own brats off to Park and Nichols at busing time, put up a howl when the low-rent housing project is put in their suburbs instead of in the blue-collar section of town, and the Liberal politicans wear flag-lapel pins at election time.

Their racism is not reserved for the home front. Lenny Bernstein and the rest of the radical chic might make fools of themselves for the Black Panthers, but they will positively grovel at the feet of any foreign dictator who throws them an occasional crumb: Castro, Stalin, Ho, Mao ("revolutionaries" are their favorites).

Castro's regime is so racist that Eldridge Cleaver left there in disgust after seeking refuge from racist Babylon; his sidekick came back to face a jail sentence rather than chop sugar cane. Neither could stomach the way socialism treated black Cubans; the Liberal line here is that we should normalize relations with Fidel. Stalin killed a lot of his people, but they were only Slavs, which any good Liberal knows are inferior to WASPs, and it was for a good cause anyhow, witnesseth the Workers' Paradise. Mao is still called an Agrarian Reformer, although his reform consisted of plowing about 50 million Chinese 6 feet under – fertilizer, you see. Mao's treatment of the Tibetans would be called genocide by a human, but Liberal dogma tells us that "those people" don't care about life, so it does not matter to them if they are murdered by their liberators. If you ask a Liberal who "those people" are he will tell you straight-faced, as he told me: "Orientals. I like the Vietnamese, but they don't care."

Ho Chi Minh is Liberalism's very own George Washington figure. Although Ho wanted to conquer all of Indochina, Liberal dogma has decreed that the war of conquest is really a civil war, and therefore is all right. The dogma has even decreed that "those people" are not ready for democracy, that communism is better for them because they don't have that WASP background so necessary to appreciate freedom. After all, "those people" are just gooks, and they don't care about such trivialities as freedom.

Never mind that those gooks have fought for freedom against the French, the Japanese, and the communists for 25 years; never mind that the Laotions and the Khmers are losing soldiers in their struggle against Hanoi's aggression faster than they are being born; never mind that the Tibetans have fought Chinese tyranny for 18 years with no chance of success; never mind that no nation ever had a democratic background before achieving freedom, yet nation after nation has risen against tyranny. Never mind – "those people" don't care.

As for our riders, I'm rooting for the muggers.

Right On!

by Otto Matsch

Right On!

The H Machine

Professor Mitchell Franklin is a tenured member of both the Law and Philosophy departments. Because he is over 70, the university must reconsider his continued employment on a yearly basis. Critics of the administration charge that Ketter *et al.* are dragging their feet on rehiring Professor Franklin, the basis of this shabby treatment being that he is a "renowned Marxist theoretician."

I don't know Professor Franklin and my opposition to him is not personal, but directed toward his philosophical psychosis. He should not be continued as a professor, and he should never have been hired.

Marxism, or Marxist-Leninism, or national socialism, or communism, or socialism, or whatever one chooses to call it, is a degenerate ideology based upon the collectivist tenet that the individual has no rights, that all rights are vested in the State, and that the individual is an object to be used and sacrificed at the whim of the State. Such a philosophy is directly anathema to the Constitution, which is a document outlining the rights of the individual and making it clear that all rights vest in the individual, not in the State.

A collectivist, any collectivist, has no more business teaching law, which means teaching about individual rights, than Adolf Hitler (also a collectivist) would have teaching a course in race relations. Nor, for that matter, does a collectivist have any business teaching philosophy, but that issue will not be dealt with at this time. A collectivist does, of course, have the right to teach, and a university has the right to hire him, but for the sake of intellectual honesty, philosophic integrity, a university should not hire one.

To the Editor

To the Editor:

Mr. Herald P. Fahringer's recent article, "The Censure of Martin Erdmann," would have put the issue in clearer perspective if it had reminded your readers of the facts underlying Mr. Erdmann's censure. According to the official report (*Matter of Erdmann*, 39 AD 2d 223, 224 [3d Dept. 1972]), Mr. Erdmann wrote of and concerning the judges in the First Judicial Department:

"There are so few trial judges who just judge, who rule on questions of law, and leave guilt or innocence to the jury. And Appellate Division judges aren't any better. They're the whores who became madams.

"I would like to [be a judge] just to see if I could be the kind of judge I think a judge should be. But the only way you can get it is to be in politics or buy it – and I don't even know the going price."

I will suggest three lessons to be learned from this unusual case and Mr. Fahringer's reaction to it, regretting only that limitations of time and space prevent a fuller statement of each point.

The first is that we need more lawyers who in Mr. Fahringer's words are "fearless enough" to expose specific instances of judicial misconduct in specific ways instead of crouching behind the anonymity of group libel. Particularly is this so when the innuendo of the libel itself is unclear. There may have been other parts of Mr. Erdmann's article which, again in Mr. Fahringer's words, "were both incisive and informative," but I am not at all informed by a statement that unnamed "Appellate Division judges" are "whores who became madams." If a school board made such a pronouncement about "teachers," or if any class of persons identified only by occupation, religion, nationality or whatever were similarly attacked, I would hope that lawyers would be among the first to protest the generality and unfairness of such allegations.

The second lesson is that the profession is constantly in need of elevating its standards of urbane and civilized behavior, or in Mr. Fahringer's words "its independence and dignity." Anyone who has observed the standing and behavior of the bar in other common law countries, both within and without the courtroom, will have sensed disturbing comparisons with the profession in the United States. There is no point in asking whether the courts are no better simply because they have risen to our level of expectations and no farther. The trial of the "Chicago Seven" is an example of a case where court and counsel, working together, managed to pull one another down to a level which neither alone could quite have attained. In the careers of our greatest advocates, no examples of such performances may be found. Clarence Darrow and Joseph Choate, to take two instances from the extremes of the profession several generations ago, would be better models than most today.

The third lesson is that in cases with First Amendment overtones, when liberals invoke their inevitable rhetoric and predictions concerning the crumbling and erosion of civil rights, they are not necessarily to be believed. I do not believe that "what happened to [Martin Erdmann] could easily have happened to any one of us;" that the decision in his case will "instill fear in other lawyers in raising their voices against our government;" or that "there will be no end to what other rights may be taken from us." From the beginnings of the republic lawyers have criticized officials and government and have done it with wit and eloquence, and so far as I know felt under no intellectual or expressive handicap in being unable to call judges madams or to suggest that as a class of persons they had purchased their offices.

There is much in Mr. Fahringer's article that has my philosophic concurrence, but little in it that I find relevant to *Matter of Erdmann*. I am entirely unmoved by the effort to picture Mr. Erdmann as "another casualty in man's historic struggle for human rights." He is, rather, a lawyer who for a moment forgot the lessons of his own craft and the obligations which hold the profession together, and who in his exaggerated assault upon one of the most sensitive instruments of democracy contributed nothing at all to the cause of liberty under law.

Hilary P. Bradford
LIB., 1953

Presidents Corner

This is the first comment on the Law School and the SBA submitted by new President Marty Miller.

At its inception the SBA was intended to be a representative democracy. Whether it effectively functions as such is a decision which, to a large measure, rests upon the shoulders of the student body. It is not surprising to learn that voter participation in the past SBA election was a sparse 30%. There really wasn't reason to vote, all candidates except one ran without opposition. Can we honestly conclude that our officers, thus elected, can accurately reflect the desires of the majority of the student body? Unfortunately this is a fiction we are forced to accept.

This isn't to conclude that there weren't any issues facing the body. There was more than enough room on the ballot for candidates of different perspectives . . . but almost no one cared. Only a few individuals approached me and sought my opinion of the grading system, potential calendar reform, etc. The majority, apparently, was not interested enough to bother to investigate. Some of you may be shocked to learn that I personally favor a pass/no credit type grading system, although I would accept some modification of that basic type. I also favor post Christmas exams: as much as I would prefer a true vacation during the Christmas holidays, I find studying more important. This doesn't mean that I am necessarily going to propose or even fight for either of these ideas. The position of President is to represent, and that can only be done if there is sufficient input to the SBA through its duly elected officials.

Very shortly we will be conducting another round of elections. At that time the classes of '73 and '74 will select their representatives for the following year. Additionally, there will be an election to fill a vacancy on the Faculty-Student Relations Board (FSRB). I ask that you give serious consideration to your choices.

The Fault with No-Fault

by Diane Graebner

"With the possible exception of the abortion problem, no issue has generated so much emotional debate as no-fault," according to Buffalo attorney William Reynolds, who spoke February 15 in "The Fault with No-Fault."

Disclaiming the title of the speech, Mr. Reynolds said he hoped to give an objective presentation, although some of his biases were clearly expressed.

Pure no-fault, represented by the Stewart Report, published in early 1970, said Mr. Reynolds, inverts the premium pyramid. Since first-party coverage pays the driver and passengers in the insured's car, he said, the employed family man with a large car and children becomes a worse risk than the unemployed, unmarried young man with a small car and usually fewer passengers. Under the fault system, the young, unmarried man is presumably a worse risk and pays higher premiums. Under the pure no-fault system, said the lawyer, the family man would have the higher premiums.

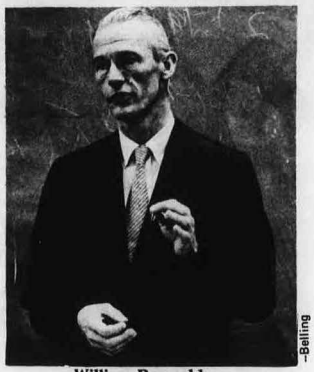
The threshold to no-fault – a barrier the insured must pass in order to sue – is "the guts of a no-fault bill," said the speaker. Five states have no threshold; six have varying ones. Florida places the barrier at $1,000 in medical expenses or a qualifying injury or $5,000 in medical expenses and wages. Michigan has a threshold only for a qualifying injury – such as death, dismemberment, significant disfigurement and permanent loss of a bodily function. The federal bill pending (Hart-Magnusen) is similar to Michigan's.

The Uniform Motor Vehicle Accident Reparations Act (UMVARA) has a threshold of a qualified injury or six months total disability.

The New York statute, signed into law February 12, excludes motorcycles, noted Mr. Reynolds. Its coverage in terms of persons includes the named insured, his relatives in the same household, passengers and pedestrians who might be hit by the insured's car. The limit of first-party liability is $50,000 in out-of-pocket expenses – all medical expenses and lost earnings to 80% of the person's wages (compensating for taxes on normal earnings) with a limit of $1,000 per month. The only collateral sources that will be deductible from the no-fault collections are Workmen's Compensation and Social Security, so a person could in theory recover twice as much with no-fault and Blue Cross coverage.

As the lawyer described the New York statute, the first-party carrier has a cause of action for special damages (taken from the individual) through binding arbitration. New York's threshold includes the basic qualifying injuries or $500 medical expenses (exclusive of psychotherapy or physiotherapy).

The statute also calls for a direct 15% reduction in bodily injury premiums, 20% if the insured opts for a $200 deductible. The Superintendent of Insurance will devise guidelines and rules to control



William Reynolds

-Belling

profits for the New York law which goes into effect February 1, 1974.

The effects of the New York statute, according to Mr. Reynolds, include its protection of an extremely narrow catastrophe category with its high $50,000 injury. He also asserted it will mean elimination of many claims, because persons with small claims will not be able to sue for pain and suffering injuries. "There are a lot of not costly but painful injuries," he said. "Persons who should be allowed access to the courts will be barred," because of the "arbitrary line drawn to reduce claims."

The system should reduce court congestion, said Mr. Reynolds, since 85% of persons injured don't have medical expenses above the $500 threshold. Some rate reduction will be immediate, although the speaker claimed the two rate reductions after the initial one in Massachusetts were not related to no-fault. He also described no-fault as "stealing from the innocent to pay the guilty" in the sense that persons who have pain and suffering will not be paid for them while persons who under a fault system could not recover will recover.

The no-fault bill also will seriously affect lawyers' job market, said Mr. Reynolds. While not many lawyers are in full-time auto litigation, many do it part-time.

In describing the "height of ridiculousness" that the no-fault debate has engendered, Mr. Reynolds noted that two anonymous letters were sent to Governor Rockefeller and Senator Gordon ("chief architect of no-fault"), threatening their lives if a no-fault bill passed. Since the letters bore Buffalo postmarks, the speaker and another prominent opponent of no-fault in the area were extensively investigated by the Bureau of Criminal Investigation.

Mr. Reynolds attributed part of the "hysterical and uninformed demand" for no-fault insurance to the media, specifically the Buffalo Evening News and the New York Daily News. He noted also some of the signs being carried around the legislature. On the one side was "no-fault is the root of all evil" and on the other "no-fault represents the motorist's right to life." The person carrying the latter sign, said Mr. Reynolds, just did not know what no-fault was about.

About 35 persons were present at this third speech in the second semester's Distinguished Visitors Forum at the Law School.

Off Hours

The following people did not respond to the *Opinion*'s request:

Buergenthal	Teitelbaum
Del Cotto	Gordon
Fleming	Holley
Franklin	Steinbock
Galanter	Rosenberg
Joyce	Birzon
Macauley	Zimmerman
Mann	Desmond
Reis	Frey
Schwartz, H.	Mugel
Swartz	

Office Hours

ATLESON, James	632	Prefer Tues., Thurs., Fri. afternoon, all day Wed., no appt. nec.
DAVIDSON, Kenneth	742	10 – 5, when not otherwise engaged
GIRTH, Marjorie	724	Office hours not est'd., appt. preferred
GREINER, William	11thP	Mon., Wed., Fri., 10:30 – 5. Appt. nec., call Pat Taylor.
HOMBURGER, Adolf	624	Appt. nec.
HYMAN, J.D.	726	Mon. & Wed. 2:30 – 3:30 and by appt.
KATZ, Al	600	Appt. unnec.
KELLEY, Patrick	608	Thurs., 2 – 5
KOCHERY, David	718	All non-class hours, appt. unnec.
LAUFER, Joseph	614	Friday 2 – 5, or by appt.
LOCHNER, Phil	738	Tues. & Thurs., appt. unnec.
MANAK, James P.	602	Appt. unnec.
NEWHOUSE, Wade	606	Wed., Thurs., Fri. generally, appt. unnec.
RICKERT, Thomas	740	11 – 12 Wed., Thurs., Fri., appt. preferred
SCHWARTZ, Richard	1120	Mon., Thurs. 2 – 3. Appt. preferred.

Fall Grades

The following is a chart of the grades for the Fall semester.
The rating system was compiled as follows: Each grade was assigned a value (HD=4, H=3, Q=2, D=1, F=0). Then the total number of points was divided by the number of persons who received a grade in that course. With this system, any course which had an average grade of Q would receive a 2.000 rating. As far as the value of the grades themselves, you can draw your own conclusion.

Course	Instructor	Enrolled	HD	%	H	%	Q	%	D	%	F	%	I – No Grade	%	R	%	Rating
Agency & Partnership	Zimmerman	26	0	0	5	19.2	15	58.4	2	7.6	0	0	0	0	4	15.3	2.136
Tax A	Joyce	150	0	0	24	16.0	92	61.3	15	10.0	7	4.6	3	2.0	9	6.0	1.921
Tax B	Del Cotto	41	0	0	8	19.5	15	36.5	8	19.5	4	9.7	3	7.3	3	7.3	1.512
Corp. Tax	Del Cotto	28	3	10.7	16	57.1	4	14.2	0	0	0	0	2	7.6	3	10.7	2.956
Con. Law A	Mann	87	2	2.2	25	28.7	40	45.9	7	8.0	1	1.1	6	6.8	6	6.8	2.266
Con. Law B	Mann	58	0	0	10	17.2	37	63.7	0	0	0	0	8	13.7	3	5.1	2.212
Family Law	Swartz	80	0	0	17	21.2	44	55.0	8	10.0	3	3.7	2	2.5	6	7.5	2.375
Corporations	Lochner	26	0	0	0	0	20	76.9	2	7.7	0	0	0	0	4	15.3	1.909
Evidence	Gordon	156	0	0	46	29.4	89	57.0	12	7.6	1	0.6	5	3.2	3	1.9	2.216
Sales	Girth	79	3	3.7	7	8.8	46	58.2	7	8.8	2	2.5	0	0	14	17.7	2.030
Ad Law	Gifford	82	0	0	15	18.2	52	63.4	0	0	0	0	12	15.4	3	3.6	2.223
Soc. Legis.	Davidson	31	0	0	3	9.6	24	77.4	0	0	0	0	4	12.9	0	0	2.111
Labor Law	Atleson	34	0	0	12	35.2	15	44.1	3	8.8	0	0	0	0	4	11.7	2.300
Grat. Trans.	Joyce	48	0	0	9	18.7	36	75.0	0	0	0	0	1	2.0	2	4.1	2.200
Future Int.	Mugel	63	0	0	16	25.3	29	46.0	12	19.0	1	1.5	2	3.1	3	4.7	2.034
Remedies	Fleming	32	0	0	9	28.1	17	53.1	4	12.5	0	0	1	3.5	1	3.5	2.166
Comm. Paper	Rickert	110	0	0	9	8.1	87	79.0	6	5.4	0	0	1	0.9	7	6.3	2.029
Crim. Proc.	Schwartz, H.	116	2	1.7	34	29.3	64	55.1	9	7.7	2	1.7	0	0	5	4.3	2.225
International Law	Buergenthal	47	1	2.1	7	14.9	26	55.3	4	8.5	1	2.1	3	6.4	4	8.5	2.025
Trial Technique	Staff	59	3	5.0	24	40.6	32	54.2	0	0	0	0	0	0	0	0	2.508
Env. Management	Reis	8	0	0	0	0	4	50.0	0	0	0	0	1	12.5	3	37.5	2.000
Civ. Pro B	Kochery																
Insurance	Laufer	18	0	0	5	27.7	10	55.5	0	0	0	0	0	0	3	16.6	2.333
SEMINARS:																	
Legal Probs. Pub. Sch.	Newhouse	41	2	4.8	7	17.0	15	36.5	0	0	0	0	3	7.3	14	34.1	2.458
Law & Social Change	Galanter	13	0	0	4	30.7	7	53.8	0	0	0	0	2	15.3	0	0	2.363
Women's Legal Probs.	Girth	16	0	0	7	43.7	9	56.3	0	0	0	0	0	0	0	0	2.437
Legal Aid	Manak	19	0	0	8	42.1	8	42.1	0	0	0	0	0	0	3	15.7	2.500
Intl. Organizations	Buergenthal	12	0	0	4	33.3	4	33.3	0	0	0	0	1	8.3	3	25.0	2.500
Clin. Sem. in Correct.	Schwartz, H.	13	0	0	4	30.7	8	61.5	0	0	0	0	0	0	1	7.7	2.333
Sch. Law Clinic	Rosenberg	13	1	7.7	2	15.3	10	76.9	0	0	0	0	0	0	0	0	2.307
Adv. Cl. Prob. Sch.	Rosenberg	2	0	0	0	0	1	50.0	0	0	0	0	0	0	1	50.0	2.000
Marxist Legal Theo.	Franklin	31	0	0	19	61.2	6	19.3	0	0	0	0	5	16.1	1	3.2	2.760
Int. Union Dem.	Atleson	10	0	0	3	30.0	3	30.0	0	0	0	0	3	30.0	1	10.0	2.500
Law & Development	Galanter	4	0	0	1	25.0	1	25.0	0	0	0	0	1	25.0	1	25.0	2.500
Legal Reasoning	Hyman	16	0	0	4	25.0	9	56.3	0	0	0	0	2	12.5	1	6.3	2.307
Judicial Admin.	Kochery																
Computers & Law	Schwartz, R.	17	0	0	3	17.6	9	52.9	1	5.8	0	0	1	5.8	3	17.6	2.153
Perspectives Law & Action	Schwartz, R.	16	0	0	2	12.5	12	75.0	0	0	0	0	1	6.3	1	6.3	2.285
Law/Psychiatry	Carnahan	14	1	7.1	5	35.7	5	35.7	1	7.1	1	7.1	0	0	1	7.1	2.307
Government Lit.	Manak	20	1	5.0	11	55.0	6	30.0	0	0	0	0	0	0	2	10.0	2.722
FRESHMEN:																	
Civil Pro A	Hyman	63	0	0	15	23.8	41	65.0	6	9.5	0	0	1	1.5	0	0	2.145
Civil Pro A	Steinbock	63	1	1.5	12	19.0	38	60.3	5	7.9	1	1.5	2	3.1	4	6.3	2.122
Civil Pro A	Homburger	63	0	0	15	23.8	33	52.3	11	17.4	0	0	3	4.7	1	1.5	2.067
Crim. Law	Katz	67	1	1.4	9	13.4	36	53.7	0	0	13	19.4	2	2.9	6	8.9	1.745
Crim. Law	Birzon	77	0	0	8	10.3	64	83.1	1	1.2	0	0	2	2.5	2	2.5	2.095
Crim. Law	Holley	62	0	0	11	17.7	37	59.6	7	11.2	2	3.2	1	1.6	4	6.4	2.000
Contracts	Fleming	61	0	0	14	22.9	29	47.5	12	19.6	2	3.2	1	1.6	3	4.9	2.140
Contracts	Macaulay	69	2	2.8	9	13.0	46	66.7	7	10.1	2	2.8	0	0	3	4.3	2.030
Contracts	Gordon	65	0	0	13	20.0	37	56.9	7	10.7	1	1.5	1	1.5	6	9.2	2.068
Torts	Laufer	58	0	0	9	15.5	40	68.9	8	13.7	0	0	1	1.7	0	0	2.017
Torts	Davidson	53	0	0	7	13.2	38	71.6	5	9.4	0	0	2	3.7	1	1.8	2.040
Torts	Kelley	63	0	0	5	7.9	49	77.7	0	0	3	4.7	2	3.1	4	6.3	1.982

Holley: Interview Concluded

by John Levi

O: I want to talk a little about your teaching. What kind of attitude do you find coming from your students when they walk into your classroom on the first day? What kind of attitude do you think the students of this school are bringing to their education?

H: One of the major types of feelings and emotions I get from a number of the first-year students, and I guess this is part of being a first-year student as well as part of being in my classroom, is a hesitancy, a reluctance to immediately discuss things that go on in the classroom that seem to bother them, or aren't clear to them. I'm not sure whether it stems from teaching methods, or just from seeing someone Black in front of them; but for the first part of both semesters in both of my years of teaching criminal law I've noticed this hesitancy, but I would attribute it not only to the race factor. It may simply be the expectations that first-year students have, the folklore of law school, a part of which is questioning, waiting to see if it all comes together. Nevertheless, I do notice what seems to me to be an unhealthy reluctance to discuss the things about which they are not clear either in class or after class; or at least to allow it to accumulate to the point where the description of what is troubling them becomes rather indefinite, and is not made clear. They can no longer cite a specific example or a specific course of discussion that we have gone through; rather it's the kind of vague generalization – "I'm not sure where you're going" or "I'm not sure I can put together the mass of material we've covered in some kind of cogent and organized form." Unfortunately this usually comes at a point during the semester, long after this process of organizing and synthesizing the materials should have begun.

I think that in large part this misconception is based upon the initial expectations about learning the "law." The notion I know I had was that the law was made up of this structured body of rules, that once you've absorbed the definition of those rules, you're going to have it, and will then be able to handle the series of cases that you'll eventually encounter in practice. In reality of course it turns out to be a much more open-ended learning process; indeed, ambiguity may be the first-year student's strongest indication that he is learning the "law." What you're really going to have to be able to do is to learn to be *comfortable* in working through the systematic thought processes that give rise to this kind of ambiguity, as a natural by-product of the development of the ability to see issues emerge from the factual pattern of a case, how a court or a legislature elevates certain of those facts as the eventual basis for its rule of law, and most important the ability to re-recognize the same significant factors no matter in what new guise they present themselves.

O: There has been some criticism of your form of examination. Both times you've taught Criminal Law, you've given take-home finals. And evidently in both semesters the students have had a lot of trouble and have ended up turning in very long and involved finals, and they find this to be somewhat of a burden on them?.

H: Is the burden because they feel they have to write a lot, or is it because it's over a longer period of time?

O: Speaking personally, I think the burden lies in having to write so much and in terms of having to do so much work for a final exam when the other exams are only three hours in length. And especially for a first-year student, one does not expect an exam that is also a paper. I think there's been a lot of dissatisfaction with the form of examination. Do you have reasons for continuing that?

H: I have a number of reasons. First, I think that in comparison to the setting for your task as a lawyer, the three- or four-hour in-class examination is more "artificial" than the take-home exam setting. I feel that emotionally, for example, students should have the opportunity early to throw down the exam question in disgust, curse me, or later to throw down the exam answer, curse me and themselves, and then continue to write a good paper.

The second reason is that my exams don't necessitate the amount of writing that the students in many cases seem to be doing. What's important and the reason that the questions are so broadly structured in terms of the amount of facts that you're given and have to deal with, is that people spend a considerable amount of the two or three day period (during which the exam is written) organizing the material. The degree of time spent thinking about the question, narrowing the most serious issues raised by the question given the factual narrative, greatly reduces the amount of writing a student will feel he has to do. I think this is more true in the case of my second criminal law exam where I asked only two questions. While both were broad in scope, I asked two such broad questions and a more limited question on my first exam. Broad questions, of course, are broad in the sense of trying to raise a good deal of the material that was covered during the semester. This year though, I even tried to word the questions in such a way that people would recognize that the important thing in beginning to prepare a competent answer here was not to immediately start to write an answer to every possible issue that could be raised. Rather, to spend considerable time thinking, after you saw the possible issues, organizing the alternative possibilities and then eliminating some of those possibilities in your mind, and then when you wrote the answer, simply in one sentence you could state why you eliminated those possibilities. This required a great deal of organization before beginning to write, and the first question this year was even worded in terms of "play the role of the district attorney and organize this particular case for me." Thus my emphasis on organization dictates that people be given adequate time to think without having to think that every second time is running out.

O: It seems to me that what you're doing is not only testing the assimilation of the body of law which you have been teaching, but also the assimilation of legal method which has not been overtly taught and which the student has not gotten in another course, in an overt fashion either.

H: That's right, but the principle lesson to be learned in first year courses I believe is that understanding and appreciating the legal method is inseparable from and in fact is one within understanding the "law." Furthermore, in contrast to my first year, I would not be as willing to agree with you that my criminal law class was not overtly exposed to "method." This year at the onset of the second half of the semester I began to hand out a series of problems, dealing with each chapter of criminal law, and having people, when they chose, to submit an answer to them. I provided a model answer for the first problem that I distributed. That model answer talked a great deal about methodology in terms of organization and in terms of the types of ways that you have to approach the answering of a question. The issue about whether you can accept all statements contained in the exam narrative and the description of "what happened" given to you by your client, as being "given facts," that you have, in other words the whole question about reading the facts and understanding them. In the same context, that answer talked about concentrating on viewing the facts from the perspective provided by the issues that the question raises.

O: And you think that these sample problems and answers gave the students a better opportunity to understand the kinds of methods that they were going to have to apply in the final exam?

H: Yes, I think so. I think that one of the things that was emphasized strongly was the whole need not to just throw things back at me, but to take some time thinking rather than writing, getting a real feel for what seems to be the crucial issues for both sides in the case, developing the best arguments both sides could make in trying to have these resolved in their favor.

O: Aren't you giving yourself an awful lot of work in having to correct that kind of an exam, and aren't you overloading the students in forcing them to do this in an examination period which is certainly a traumatic period, and possibly the most traumatic period of the first semester freshman's career?

H: My answer to that is that from the perspective of the student, this estimation of what happens when this kind of exam is given is understandable. It seems however, that if this is the consensus of student opinion, it is a function of a first law school *exam* hysteria, that I do not care to weight it highly in structuring my exam. The anxiety may be real, but the extended time period is designed to reduce its actual impact on the writing of the exam. Besides, I am not sure that I am willing to give up the other types of skills that students can demonstrate on my exams, thinking about the question of the degree that he has some type of not just issue-recognition, but he knows how to take the criminal law and apply it to the issues in such a way that he screens out certain crimes, demonstrates skills that are, I think, much closer to reality in terms of the types of things he would have to do as a lawyer.

O: Might you see any possibilities in terms of another alternative?

H: That's one of the things that you don't get in this school, as far as feedback from the students as to what they thought was most onerous about a particular exam or a particular exam format. You might have a few people after the exam is over come and say, I think that this was tremendously burdensome in terms of the three day exam format, but you don't have the opportunity to talk with students as a group about the very specific things that were bothering them about the exam, because although I have heard from 6 or 7 people about the problem of writing a lot, but that is something that could be handled if they had understood from the beginning that their perception of how much they *had* to write might be inaccurate. Again if more specific details of the types of problems students encountered in writing this kind of exam were more available to me, a revision to meet the consensus hardship might be undertaken. Otherwise, I think, for purposes of my criminal law course, that the students be best examined by using this test format. I am not opposed, however, to trying a technique employed by some of my colleagues. The exam can be divided into take-home and in-class components, if the next class of students expresses a strong preference for the in-class or mixed format.

O: What about the possibility of a mid-term or some kind of a take-home paper during the course of the semester?

H: I'm not in favor of using a midterm for the first semester freshmen as an exam that counts for any kind of credit toward the final grade. The reason being that I do feel the students are justified in learning what the professor is "looking for," what he expects from them, before they are asked to write an exam for credit purposes.

Brewster (cont'd.)

–continued from page 2

terms of specially high salaries, using the savings we thought we might gain by abandoning tenure. So, the argument for the purposes of this discussion has to be made on the grounds that Yale is a better educational and scholarly place because it gives its professors lifetime appointments. I would assert that this would be so even if our competitors did not do so.

The job security argument arose when university faculty were grossly underpaid in comparison with other professional callings. They were even more disadvantaged when compared with the marts of trade and finance. This is still true, especially at both ends of the ladder: the bottom rungs of starting salaries, and the higher rungs of top management compensation. In the middle range, however, academic salaries at a place like Yale are not grossly lower than the earnings of other professional callings. So, the use of job security as bait to persuade people to take a vow of "academic poverty" is not a sufficient argument. (It still has persuasive merits, however, for those institutions which pay substandard salaries. Such institutions are the proper concern of not only the AAUP but should be the concern of a society which has an enormous stake in attracting a sufficient number of people into careers devoted to the higher education of the young and the advancement of knowledge and understanding.)

The rationale of academic tenure, however, is somewhat different from job security in the industrial world, especially in an institution which wants its teachers to be engaged in pushing forward the frontiers of learning. This lies in the fact that contributions to human knowledge and understanding which add something significant to what had gone before involve a very high risk and a very long-term intellectual investment. This is true especially of those whose life is more devoted to thought, experimentation, and writing than it is to practice.

If teaching is to be more than the retailing of the known, and if research is to seek real breakthoughs in the explanations of man and the cosmos, then teachers must be scholars, and scholarship must be more than the refinement of the inherited store of knowledge. If scholarship is to question assumptions and to take creative discovery would for the risk of testing new hypotheses, then it cannot be held to a time-table which demands proof of pay-out to satisfy some review committee.

I think that even with their privileges and immunities our academic communities are often too timid in their explorations. The fear of failure in the eyes of the peerage inhibites some of our colleagues, even when they do have tenure. Too many seek the safe road of detailed elaboration of accepted truth rather than the riskier paths of true exploration, which might defy conventional assumptions. Boldness would suffer if the research and scholarship of a mature faculty were to be subject to periodic scorekeeping, on pain of dismissal if they did not score very well. Then what should be a venture in almost everyone degenerate into a safe-sided devotion to riskless footnote gathering. Authentication would replace discovery as the goal. The results might not startle the world, but they would be impressive in quantitative terms and invulnerable to devastating attack.

Purely economic connotations of "job security" greatly understate the distinctive aspect

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Brewster (cont'd.)

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of the academic calling. At its best the university expects a person literally to make a lifetime investment in his special way of looking at the human and natural experience, in the hope that he will contribute something of permanence to the understanding of some corner of the universe.

The second, and most highly touted, rationale for tenure is academic freedom. This concern, traditionally, has focused on the privilege of immunity from "outside" interference. Within memory of those still active, "McCarthyism" is the most telling nightmare.

Of course there are corrupting influences, financial, institutional, and professional. By and large, however, of all the types of institutions which gather people together in a common effort, the university remains the least inhibiting to variety in ideas, convictions, styles and tastes. It encourages its members to pursue doggedly any idea in which they have confidence. Progress in the world of thought depends on people having enough freedom and serenity to take the risk of being wrong.

This struggle to preserve the integrity of the institution and the freedom of its faculty members from external coercion is never over. However, despite the winds of controversy inherent in a troubled time, whetted occasionally by demagogic desire to make academia the scapegoat for society's ills, the ability of a strong university to give its faculty convincing protection against such threats will depend more on the steadfastness of the institution as a whole than it will on tenure.

The dramatic image of the university under siege from taxpayers, politicians, or even occasional alumni is a vivid but not the most difficult aspect of the pressures which tend to erode academic freedom. The more subtle condition of academic freedom is that faculty members, once they have proved their potential during a period of junior probation, should not feel beholden to anyone, especially Department Chairmen, Deans, Provosts, or Presidents, for favor, let alone for survival. In David Riesman's phrase teachers and scholars should, insofar as possible, be truly "inner directed" – guided by their own intellectual curiosity, insight, and conscience. In the development of their ideas they should not be looking over their shoulders either in hope of favor or in fear of disfavor from anyone other than the judgment of an informed and critical posterity.

In strong universities, assuring freedom from intellectual conformity coerced within the institution is even more of a concern than is the protection of freedom from external interference. This spirit of academic freedom within the university has a value which goes beyond protecting the individual's broad scope of thought and inquiry. It bears crucially upon the distinctive quality of the university as a community. If a university is alive and productive it is a place where colleagues are in constant dispute; defending their latest intellectual enthusiasm, attacking the contrary views of others. From this trial by intellectual combat emerges a sharper insight, later to be blunted by other, sharper minds. It is vital that this contest be uninhibited by fear of reprisal. Sides must be taken only on the basis of the merits of a proposition. Jockeying for favor by trimming the argument because some colleague or some group will have the power of academic life or death in some later process of review would falsify and subvert the whole exercise.

I have not been able to devise, nor have I heard of, any regime of periodic review with the sanction of dismissal which would not have disastrous effect. It would both dampen the willingness to take long-term intellectual risks and inhibit if not corrupt the free and spirited exchanges upon which the vitality of a community of scholars depends. This, not the aberrational external interference, is the threat to the freedom of the academic community which tenure seeks to mitigate.

Also, I do not think the costs of tenure are very high for a first-rate university. Those who gain tenure at Yale do not rest in happy security on their professional laurels. Indeed in my relatively brief experience, almost without exception it is the elders who are productive up to and well beyond retirement. They are the ones affected with the migraine headaches and other forms of psychosomatic traumas, lest their life should ebb away without the completion of their great work.

As a practical matter of personnel policy, the very fact that the professional promotion is a lifetime commitment of university resources makes the departmental and committee process of promotion to tenure much more rigorous and hard-headed than it otherwise would be. If there were a confident feeling that mistakes in judgment could be rectified by some later review process we would all go soft and give colleagues of whom we are personally fond an excessive benefit of all doubt. Realization that the commitment is for keeps helps to hold the standards high. So, I would venture that whatever gains might be made by reserving the right to a second guess would be more than offset by the laxity which would come to soften the first guess. In short, we would not have as good a senior faculty as we now do, if tenure were not the consequence of promotion to senior rank.

Such a pragmatic calculation, however, is nothing compared to the value to the university of trying to maintain the ideal of the independence of the individual in his own intellectual pursuit.

When I assumed my office I said that: . . . *there is a common ethic which draws some men to a university in preference to any of the many other groups which are now publicly and privately organized to discover as well as apply knowledge. Affluence often, prestige sometimes, is foregone in order to be able to spend one's time and energy and mind upon whatever seems to him most intriguing and exciting; not to be directed by what some client or customer may request, or by what some absentee bureaucrat is willing to support.*

In the light of intervening reflection, I would now add that this "common ethic" also requires broad protection from administrators and the colleagues within the community, no more and no less than from the "absentee bureaucrats" in Washington to whom I was referring.

Tenure, then, is not a luxurious indulgence. Even in times when scarcity of resources threatens the existence of whole departments, I would affirm that our mission requires Yale to give that measure of encouragement and independence which only irrevocable appointment can confer.

The Smoking Car

Following are two lists, the first of professors here who do not allow smoking in their classes, the second who do. The lists are based upon information and belief for classes, not seminars. Profs. not listed were out of town or could not be contacted by telephone.

No-Smoking	Smoking	
Laufer	Mugel	Holley
Homberger	Girth	Gordon
Del Cotto	Buergenthal	Lochner
Rickert	Manak	
Davidson	Mann	
Hyman	Greiner	
Joyce	Kelley	
Schwartz, H.	Kochery	
Reis	Fleming	

Notes from Elsewhere

by Kay Latona

from AMERICAN BAR NEWS, Jan. '73

The ABA's committee established to study the feasibility of reviewing the moral character and fitness of entering law students has recommended that:

Law schools apprise applicants of character requirements for admission to the bar;

States be urged to require pre-registration for admission to the bar;

The ABA encourage research studies to determine whether character traits can be usefully tested prior to admission to the bar;

The National Conference of Bar Examiners be urged to develop a uniform character questionnaire for first-year law students, to be used by bar admission authorities; and that all approved law schools cooperate with bar admission authorities by making certain information about students available to admission authorities.

from NEW YORK STATE LAW DIGEST, Jan. '73

The Appellate Division has held that, while NOW (National Organization for Women) had standing to ask for judicial review of a State Division of Human Rights decision allowing newspapers to publish advertisements concerning employment opportunities under classifications indicating whether the opportunities were for males or females, the applicable statute, sec. 296 (1) (d) of the Executive Law applies only to employers and employment agencies, and that newspapers are not included within the term "employment agency." It also held that the newspapers were not guilty of aiding and abetting an unlawful discriminatory act by so publishing their classified ads. (*National Organization for Women v. Gannet Co.*... A.D. 2d..., N.Y.S. 2d ... Dept., 11/30/72).

from THE COLUMBIA LAW SCHOOL NEWS, Nov. 20, '72

The agreement between Columbia University and the Dept. of Health, Education and Welfare on hiring women and minorities leaves the Law School at Columbia essentially unaffected. It requires that the Law School hire only one additional woman and no minority members by 1977. (This does not foreclose the possibility that Title VII, 42 U.S.C. sec. 2000(e), might require a substantial increase in those figures, if the Law School is ever challenged in court.)

The HEW guidelines conform the number of women and minority faculty to the percentages of those groups in the pool of all 1969–70 national law graduates.

Holdings in recent employment litigation suggests that the conformity be not to national percentages, but to pool percentages from the immediate area from which persons are hired. (E.g., *Contractors Ass'n of Eastern Pennsylvania v. Secretary of Labor*, 442 F.2d 159 [3d Cir. 1971].)

The Columbia Law School faculty of forty-six full-time members presently has one woman and one minority member.

from VIRGINIA LAW WEEKLY, 11/17/72

Five black Virginians, who failed the 1972 state bar examination, including two graduates of the UVA Law School, have filed suit in a federal district court alleging racial discrimination by the bar examiners. The complaint alleges that Bar Examiners are engaged in a "policy and practice" of discriminating against Blacks in that the "standards, procedures, and administration of the bar examination . . . unlawfully favor white persons and exclude, limit, and otherwise discourage" black persons. They point out that over 70 percent of the white examinees passed in June 1972, while approximately twenty per cent of the black examinees passed.

The complaint alleges that the subjective nature of the examination, the requirement of a photograph of the applicant which gives the examiners "the capability to instantly identify an applicant's race or color," and the failure to provide formal review for unsuccessful applicants provide the means for the examiners to discriminate on the basis of race.

from THE TEXAS LAW FORUM, Univ. of Texas Law School, 10/2/72

Two sophomore law students have prepared and submitted a memorandum questioning the constitutionality of the Declaration of Intent to Study Law, the signing of which is required by the Texas Board of Law Examiners of entering freshmen at the University of Texas Law School.

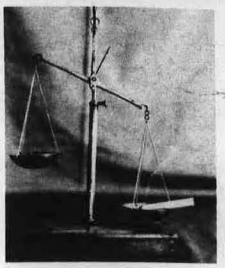
The two sections being questioned are section 8, which asks the applicant whether he is now or ever has been a "communist" or a member of a "Communist Front Organization," and section 15 in which the applicant "agrees" to allow the Committee on Bar Candidates to keep secret the source or nature of any information which it may consider to disqualify the applicant.

The two students made it clear when they submitted the memo that suit would be filed this fall if some action were not forthcoming. The Board decided to reword section 8 to conform to guidelines recently handed down by the Supreme Court in *Law Students Civil Rights Reserach Council v. Wadmond*, and to drop the no disclosure clause from section 15.

However, the forms handed out to this fall's entering freshmen contained the old wording, and it is unclear from the new wording whether the applicant would be allowed to confront his accusers even though he no longer need promise to forego this right. Also, apparently, section 8 seems still to discriminate against certain political beliefs.

One of the two students remarked, "[P]olitical beliefs have nothing to do with whether or not you will be an honest attorney. The Declaration of Intent enables the Board to discriminate against minorities and anti-establishment elements. The Bar should change its emphasis and attempt to police members who have committed unethical acts, and not applicants whose politics are unorthodox."

SMOKERS FACE MORE SEGREGATION



-Belling

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by Barbara J. Katz

While some members fumed, and their cigarettes did the same, the American College of Chest Physicians recently struck a blow for the non-smoker: For the five days of its 38th annual convention in Denver, the organization of physicians and surgeons specializing in heart and lung diseases ordered delegates who smoked to sit in a segregated area.

The college's action is part of a growing effort begin undertaken by physicians, government agencies, transportation systems, and citizen groups to promote the rights of the non-smoker. Giving rise to the effort is evidence that the non-smoker's health may be damaged by breathing someone else's tobacco smoke.

Many non-smokers have known that tobacco smoke causes them discomfort. But evidence substantiating this subjective feeling, and suggesting that tobacco smoke actually is harmful, was brought together for the first time in the 1972 report of the U.S. surgeon general, "The Consequences of Smoking."

The report cites more than 100 studies done in the country and abroad, mostly in the late 1960's and early 1970's, as evidence that smoking is harmful to non-smokers. Among the major findings of these studies:

Tobacco smoke may exert an adverse effect on the disease protective mechanisms of the immunological system in man and animals.

Tobacco smoke exerts complex pharmacologic, irritative, and allergic effects – such as eye irritaions, nasal symptoms, headaches and coughing – on non-smokers as well as smokers.

Tobacco smoke may exacerbate symptoms in non-smokers who are suffering from allergies of diverse causes.

As a source of carbon monoxide, tobacco smoke in a poorly ventilated room can be dangerous to persons suffering from heart disease or respiratory diseases such as chronic bronchitis and emphysema.

Exposure to high levels of carbon monoxide in smoke-filled rooms may impair work performance and affect auditory discrimination, visual acuity, and the ability to distinguish relative brightness.

Carbon Monoxide Levels

Dr. Jesse L. Steinfeld, U.S. surgeon general, says that several studies cited in his report show that the level of carbon monoxide attained in rooms with a high concentration of tobacco smoke sometimes exceeds the legal limits for maximum air pollution permitted in several states and cities. The carbon monoxide level may also exceed the "threshold limit value," an occupational standard for a 40-hour week now in effect for U.S. industry, Steinfeld says.

While Steinfeld acknowledges that long-term research necessary to establish whether exposure to tobacco smoke causes serious illness in non-smokers has not yet been done, he says the 1972 report is "ample proof" that "those who complain of discomfort in smoke-filled rooms are not disagreeable malcontents, but have legitimate cause for complaint."

Since the publication of the 1972 report, Steinfeld says, non-smokers have scored gains in several areas. More airlines are now providing separate seating for smokers and non-smokers. A number of hospitals around the country have begun to restrict where smoking is permitted, some doctors have banished smoking from their waiting rooms. Legislation aimed at restricting smoking in public places has been introduced in several states and in Congress. The U.S. Department of Health, Education and Welfare has prohibited smoking in its conference rooms and auditoriums and established no-smoking areas in its cafeterias and dining rooms.

Cranks No Longer

The surgeon general's report also served as a boon to non-smoker groups.

"We used to be branded cranks or neurotics," says Clara Gouin, founder of Group Against Smokers' Pollution (GASP). "But now we've got the hard facts to show that it's not just a question of crankiness: Our health is involved when people around us smoke."

GASP, headquartered in College Park, Md,. has established chapters on the West Coast and in Rochester, N.Y. in the last year. Not quite two years old, it began with only a dozen members, mostly friends of Mrs. Gouin. Its mailing list now numbers in the thousands and its newsletter, the Ventilator is sent to all 50 states.

Simple Aims

GASP's aims are simple: to publicize the rights of the non-smoker and to turn public opinion against the social acceptability of smoking. Non-smokers have the numbers, Mrs. Gouin notes, since only about one-third of American adults smoke. But for years, she says, non-smokers have suffered in silence because smoking was considered socially acceptable and even desirable.

Now, though, she says, "non-smokers are realizing that their right to breathe clean air is superior to the privilege of another person to enjoy a harmful habit."

For smoke-plagued nonsmokers, GASP's advice is simple: Be vocal in speaking out against smoking. At home, throw out all ashtrays and explain to visitors that their pipes, cigars, and cigarettes are no longer welcome. Outside the home, tell smokers when their smoking causes discomfort.

"The smoker's usual argument is that he has a right to smoke," says Mrs. Gouin. "We reply we have a right to breathe."

Sports Huddle

by Douglas C. Roberts

The Prudential Building was the site of the first national seminar on contemporary sports problems and the law. Gathered in the luxuriant confines of Room P-1 were legal scholars and sports officials from throughout the country. Dean William Prosser served as seminar chairman. In his keynote address, Prosser stated that the conclave's purpose was to begin an exhaustive search into the impact of sport on our traditional system of jurisprudence. "After all," Prosser related, "few people are aware that the epic Dartmough College case really stemmed from the illegal termination of the head football coach's contract."

Before being led away, Dean Prosser turned the proceedings over to Derek Sanderson, professional hockey's Christine Jorgenson. Jumping Derek led the group into a heated debate on the subject of the moral aspects of contract breaking by professional athletes. Derek, exhibiting the tight-knit logic uniquely possessed by 8th grade dropouts bluntly expounded, "contracts is made to be broke."

At this point, Professor Willitson, through a medium, sharply responded to Mr. Sanderson's position. Citing Philadelphia Ball Club v. Lajoie, 202 Pa. 210, 51 A. 973 (1902), Willitson contended that the services of a professional athlete are of such a unique character, and display such a special knowledge, skill and ability as to render them of a peculiar value to the ball club, and so difficult for substitution, that their loss will produce irreparable injury, in the legal significance of that term, to the ball club. Nothing short of an equitable remedy of injunction should be allowed the ball club when a player breaches his contract, claimed Willitson.

Tabling this difficult issue, the conference next delved into the intriguing subject of women's participation in inter-collegiate sports. Al Snyder, coach emeritus of the famous Shyster football teams of the early '70's, stirred frenzy into the group of dignitaries by muttering under his breath for all to hear, "if you start to allow broads on the athletic fields, there won't be enough of 'em left to be cheerleaders."

Not contesting Snyder's faultless logic, the Honorable Kenneth Davidson of the University of Buffalo Law School implored the audience to look at the human side of the issue. "Shouldn't young girls be afforded the opportunity, presently possessed only by their brothers, of someday playing in the Super Bowl?" "Why," Davidson implored, "must little girls direct their pursuits exclusively to the mixing bowl?" With his voice cracked by emotion, Davidson sat down to the resounding cheers of the female panel members.

As sunlight tiptoed its way out toward Lake Erie, the drowsy-eyed panel of sports celebrities and legal giants tackled head-on the controversial topic of euthanasia, and with it the manifold moral and legal questions presented thereby.

Of contemporary interest, the panel directed its attention to the Philadelphia '76ers and the New York Islanders. Should these two woebegottens be mercifully relieved of their worldly wretchedness? The vexing inquiry threatened to tear the conference apart at the seams.

A resolution to this sticky problem was offered by Bill Rehnquist, the recognized expert in sleep-provoking decision writing. Introducing himself with a deep-throated yawn, Rehnquist solemnly cautioned that to give legal sanctions to post-fetal killing could only lead to a furtherance of disrespect for the principals of democracy, clearing the way still further for the cancerous spread of monolithic communism.

On the other end of the spectrum stood Charlie Colbert, chief spokesman and right-hand man for Red Schwartz, the eminent Dean of the UB Law School. Not one to dawdle with platitudinous opening remarks, Charlie got right down to the nitty gritty. He likened UB Law to a professional sports club. "At our institution," Charlie intoned, "we demand results. We follow our motto, Shapus upus et shipus outus (Latin), with no exceptions."

Responding to questions from the floor critical of this harsh and impervious policy, Charlie offered his attackers this logical explanation. "When a student puts us to sleep once too often with an incompetent exam, we merely return the favor by putting him to sleep." "In so doing," Charlie explained, "we're merely following the oldest principle of the Common Law, that of an eye for an eye . . . "

Without a resolution to any of these mind-throbbing problems, the bell rang signalling the end of this momentous conclave. Those in the audience walked away with a sentience rarely felt in the innards of human beings. Asked to describe his feelings, Otto Matsch, covering the event for the "National Lampoon," told this reporter, "Wow, man, this was the biggest groove since Woodstock."

Hoopers Meet; Necks Get Craned

by Skip Hunter

Junior forward, Larry Taylor poured in 10 points Thursday night to lead the law school Bruins to a decisive basketball victory over their intraschool rivals Stare Decisis 37-25 in one of the last games of the intramural athletic season at Sweethome High School.

Taylor, who saw little playing time last year as Wilt Chamberlain's back-up displayed a deadly shooting touch from the baseline while hitting on 52% of his shots.

As a team, the Bruins shot an even 40 percent with three players hitting in high figures. Center Mike Rothschild scored 8 while his backup J.J. Freeman added 7.

"I'd like to forget about this year," Captain Paul Litwak of the toddling Stare Decisis team said following the game. "I hate losing." At the half the Bruins led by only three, with the score 15-12. But after Stare Decisis' Joe Gerkin scored on a fallaway jump shot, to make the score 16-14, the Bruins reeled off 8 straight points to put the game virtually out of reach.

Part of the reason for the close halftime score was a result of an effective man-to-man defense. Near the end of the first half, the Bruin's Coach Alan Mescal went into his more familiar zone defense, limiting Stare Decisis to 13 points in the second half while breaking the game open with a blistering fast break.

Asked if Bruin fans can expect more fast breaking during the remainder of the season, Mescal replied, "If we can get the ball off the backboard, we're gonna go."

Nothing more need be said about the dynamic Bruin squad. But honorable mention must be given to Stare Decisis' Steve Licht, Martin Littlefield, Lou Harmeski, and Paul McCarthy . . . each of whom played a sensational floor game. Glen Lefebvre arose from his sick-bed suffering from the flu and did an impressive job dribbling and shooting from his knees.

Tender Loin

–continued from page 8

the Main Place Mall where the food is as varied as the view. The Sandwich Shop upstairs is not the best, but if you ordered something hot, it generally is. The specialties are off the grill, and tend to be a little greasy. There is also a downstairs stand, that makes no pretense of being anything else but a hot-dog and hamburger pit. At the other end of the mall is Schrafft's Hamburger Chalet, upstairs and down, where the only difference is the price. Upstairs, of course, is more expensive, and even downstairs is a little expensive for hamburgers, but the service is good and the atmosphere more relaxing.

When you get dressed up for a job interview or some other non-scholastic endeavor, and put on a suit, pantsuit, skirt or bra (choose from the above), you might want to take a slight step up in price as well as quality and atmosphere and try Jack's Cellar at 110 Pearl or the Deli, located in the basement of the Statler.

ALUMNI LINE

by Earl Carrel

The Law School Alumni Association's annual dinner and awards presentation will be held Friday evening March 9, 1973, in the Buffalo Athletic Club. Three distinguished alumni will be presented awards for distinguished service. The awards will be given to retired City Court Judge Frank J. Luchowski, '37, the late Samuel C. Battaglia, '27, and Clarence R. Runnals, '15.

In addition to the awards, diplomas will be presented to 15 February graduates of the Law School, who will be guests of the Association at the dinner.

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Abram Pugash, '41, of Synder, died February 13, 1973.

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George E. Bingenheimer, '52, of Buffalo, died January 26, 1973.

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Hon. Frank R. Bayger, '55, Erie County Court Judge, has been elected to the Executive Committee of the NYSBA Criminal Justice Section. Judge Bayger will serve a one-year term as the representative of the Eighth Judicial District. He is also Chairman of the section's sub-committee on court reform.

* * * *

Eugene W. Salisbury, '60, of Blasdell, is the new president of the New York State Association of Magistrates.

* * * *

James P. Manak, '64, assistant professor at the Law School has been appointed a Reporter for the newly formed Minimum Standards for Juvenile Justice Project of the American Bar Association and the Institute of Judicial Administration.

* * * *

Ernest J. Norman, '70, dropped us a line from Washington, D.C. where he is working in the General Counsel's Office of the Small Business Administration. Before going with the SBA, he was with the Interstate Commerce Commission.

BULLETIN BOARD

CLASSIFIED AD

Blacksmith Shop, 1375 Delaware, Jazz by Thermopylae (described by ethnomusicologist Bill Tallmadge as "Electric Art-Music"). Organic food and/or methyl alcohols.

JAMES RESTON TO SPEAK AT CANISIUS COLLEGE

James Reston, vice president of the *New York Times* and nationally syndicated editorial page columnist, has accepted an invitation from Canisius College to speak at the Fitzpatrick Chair of Political Science Lecture.

The program will be held March 1 in the Canisius College Student Center Auditorium on Hughes Avenue, Buffalo, beginning at 8:00 p.m. The public is invited to hear the Fitzpatrick Lecture at no charge.

CONCERT

Niagara University and WKBW Radio will present the Guess Who and Messiah in concert Sunday, February 25, at 8 p.m. in the gym on the Niagara University Campus. Tickets are $4.50 (general admission) and are available at Buffalo Festival Tickets, U.B. Norton Union, Buffalo State Ticket Office, D'Amico's in Niagara Falls and at Niagara University.

ACLU

To join with 180,000 other Americans in the defense of liberty through an ACLU membership, send your check to American Civil Liberties Union, 22 East 40th Street, New York, New York 10016. Membership Categories: $15 Basic; $25 Basic Joint Membership; $50 Sustaining; $100 and up Sponsoring; $1,000 and up Life; $5 Limited Income. Members receive the newsletter, *Civil Liberties*, and choice of other ACLU publications.

SPEAKER'S HOUR

Professor Richard B. Bilder, of the University of Wisconsin Law School, will speak Thursday, February 22, at 1 p.m., Room 110. The topic will be the Icelandic Fisheries Case. Sponsors are Mitchell Lecture Series, Distinguished Visitors Forum and the International Law Club.

SUMMER IN FRANCE

All those interested in this summer's course at the International Institute of Human Rights in Strasbourg, France, please leave your name and address with Shirley.

BELGIAN EXCHANGE

All those interested in participating in Belgium Exchange Program, with the University of Brussels, please fill out survey available at Shirley's office.

Tender Loin

Gastronomical and Other Delights
J.P. MacMichael

It seems that it is not only *de rigueur* to knock the Buffalo weather, but also just about everything else connected with the city, especially its downtown area. But upon more than a cursory inspection, one will find a relatively inexpensive way to feed one's stomach (it's a little too much to expect to be able to feed your head given one hour between your seminar in Sewer Correction and your Advanced Clinic on the Socio-economic Effects of Life after Birth).

This article is presented as an alternative to brown-bagging your lunch or subjecting yourself to the mercy of the Three Coin token time bomb special of the day. The weather will probably determine how far you want to trudge so I'll start with the closest place, DuBois!

Almost everyone has at least heard of DuBois and at least knows where it is. The main entrance is around the corner from Eagle, and should not be confused with the BAC which is around the other corner from Eagle. Art will gladly give you directions, and if you do not know who Art is you weren't listening very well at Freshman orientation. Also, for those of you who have been wondering what those law students have been doing in the alley behind Eagle, allay your fears, for that is the back entrance to DuBois. The specialty is Budweiser, and they also serve Italian dishes, with a better than average fish fry special on Friday. Everyday there is a special, which means they knock a couple of dimes off the normal price of one of their dishes. Their sandwiches are on par with most downtown restaurants primarily catering to the lunch crowd. Service is good.

If you walk down to 145 Franklin, you will come to Ace's Steak Pit which has a long circular bar and a good sirloin sandwich (hamburger). The service is a little tight during lunch hour, though.

Going the other way, the next closest place would be the UN Restaurant (please do not call it the un-restaurant). It is inconspicuously located in the basement of Prudential. One should differentiate between the sandwich counter across from the restrooms in the basement and the main dining area. In the main area, it seems that the waitresses are very perceptive for they recognize law students and are extremely considerate in not wanting abruptly to bring us back to the real world between classes. This trait carries over even after the food is ready, for they apparently feel that we seek no earthly delights and do not mind that our sustenance is many degrees cooler than edible.

If the winds have subsided below 30 m.p.h. you might want to venture to possibly one of the best, cheapest places downtown – Hughes Coffee Shop. Located on Main Street across from the Ellicott Square Building, with a side entrance facing Cathedral Park, Hughes specializes in take-out as well as a cram 'em in on a stool service, but the food is great and the prices are better. There is a special every day, together with a changing sandwich menu. During peak lunch hours, you fight for service and a stool with downtown businessmen (take note libbers, I mentioned men first) and young secretaries dashing in for a quick one.

Speaking of downtown businessmen and young secretaries, it is a short walk to

–continued on page 7

Turn of the Screw

by Ian DeWaal

This is the premiere column of "Turn of the Screw." The column, appearing in each issue of the *Opinion* will focus on the 11th floor of the Prudential Building and will report events and dates concerning the administrative functioning of the Law School. As a mouthpiece for the administration, "Turn of the Screw" will hopefully ease the now congested flow of information between students and administration and give its readers new insights into the functioning of the Law School hierarchy.

Ian DeWaal has replaced John Dick as Student Assistant to Marjorie Mix, Assistant Dean of the Law School. Mr. DeWaal will provide counseling for financial aid and other student affairs matters. His office hours will be Wednesday, 9:00 to 11:00 and Thursday, 11:00 to 2:30 in the Assistant Dean's office on the 11th floor of the Prudential Building. If these times are inconvenient, leave a message at the Prudential Building or at 838-4576 anytime.

All students who have not done so should pick up their student schedule card to affirm that they are properly registered for their Spring Semester courses. Cards can be picked up in the Registrar's office on the 11th floor of the Prudential building. Students whose names do not appear on the class lists at the end of the semester may encounter difficulty in obtaining permission to take the final examinations.

Students are permitted to drop courses on April 16, 1973. In order to drop a course, a computer form must be completed in the Registrar's office. Students should note that participants in the three year program must be registered for at least 12 credit hours per semester while those in the four year program must maintain a 9 credit hour schedule per semester. Additional information can be obtained from Charles Wallin, Registrar.

The deadline for submission of "Form UB" to the Financial Aid office for assistance during the 73-74 school year is March 1st. The deadline for filing the "College Scholarship Service Student's Financial Statement and Parent's Financial Statement" was February 1st. Both forms must be filed in a timely fashion if an applicant is to receive consideration for financial aid for next year.

Independent and married students note: the University-wide "Committee on Financial Aid to Students" has approved a new regulation for independent and married students. Hereafter, independent and married students will be assumed capable of contributing a minimum of $750.00 toward their own support. Clarification of the effect this will have on financial aid awards can be obtained by calling Claire Cosgrove in the Financial Aids Office, 831-3724.

Students who are now contemplating changing their residence for next year should begin looking early. The Off-Campus Housing office on the main floor of Goodyear Hall at the main campus posts daily lists of available apartments, rooms and houses in the Buffalo area. The administration is currently negotiating for space in the new residence facilities that will become available on the Amherst Campus next fall. Further information will be available in the near future.

* * *

The official dates for Spring Recess are March 19 through March 24.

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Any students who will be applying for New York Higher Education Assistance Corporation (NYHEAC) loans after March 1st should note that a supplemental form must be submitted with the application. These forms may be obtained from Jean Consiglio on the 11th floor of the Prudential Building.

* * *

In order to familiarize students with the committee structure of the Law School, "Coffee with a committee" hours will begin in the near future. Students will have the opportunity to query committee members on their responsibilities and the areas of the committee's jurisdiction. A listing of dates and committee names will be posted.

* * *

The assistant Dean has received a listing of public interest law firms across the country and available positions. Compiled by Harvard University, the list may be found in Dr. Mix's office.

* * *

Gary Masline and Paul Litwak have been named recipients of scholarships from the Women's Auxiliary of the Erie County Bar Association. Each will recieve $400.00.

* * *

If you have any questions you would like to see answered in this column, contact Ian DeWaal.